

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

HONORABLE TERRENCE G. BERG

v.

No. 17-20636

ROBERT DONALD GORDON,

Defendant.

SENTENCING HEARING

Detroit, Michigan -- Thursday, March 28, 2019

APPEARANCES:

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Exhibits:

None

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1 Detroit, Michigan
2 Thursday, March 28, 2019
3 10:55 a.m.
4 - - -
5 THE CLERK: The Court now calls Case Number 17-20636;
6 United States of America versus Robert Donald Gordon. Counsel

8 MS. WILLIAMS: Good morning, Your Honor. Jihan
9 Williams, appearing on behalf of the United States.

10 | THE COURT: Good morning.

11 **MS. STUDNICKI:** Good morning, Your Honor. Stacey
12 Studnicki, the Federal Defender's Office, on behalf of
13 Mr. Gordon, who is standing to my left.

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15 **THE COURT:** Good morning, Ms. Studnicki. Good
16 morning, Mr. Gordon.

17 Today is the date we have set for the sentencing in this
18 case and so let me just take a few moments to explain what is
19 going to happen. So, Mr. Gordon, we're going to have a hearing
20 to decide what your sentence should be in this case. As part
21 of that, we're going to go over the presentence report to make
22 sure you've had a chance to go over that with your attorney and
23 see if you have any objections to it or things in it that you
24 think are incorrect. We'll also go over with you what your
25 Plea Agreement was and I'll indicate whether I'm going to

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1 accept your Plea Agreement or not since we took it under
2 advisement at the time of your sentencing.

3 I'm also going to go over with you what the factors are
4 that The Court has to consider in deciding what the sentence
5 should be. After that, I'm going to give your attorney a
6 chance to say anything that she would like to say on your
7 behalf and I'll also give you a chance to say anything you'd
8 like to say.

9 I'm also going to give Ms. Williams, on behalf of the
10 Government, the opportunity to address The Court. After that,
11 I'll go through the different factors that apply and I'll
12 indicate what the sentence is going to be. Do you think you
13 understand what's going to happen?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** All right. Then why don't you come up to
16 the lecturn here with your attorney. And let me ask you, did
17 you have a chance to go over the presentence report?

18 **THE DEFENDANT:** Yes, Your Honor.

19 **THE COURT:** And Ms. Studnicki, did you also go over
20 it?

21 **THE DEFENDANT:** Yes, Your Honor.

22 **THE COURT:** And did you, Mr. Gordon, see anything in
23 the presentence report that was incorrect or was a mistake of
24 any kind that you wanted to bring to The Court's attention?

25 **THE DEFENDANT:** Not that I recall, Your Honor, no.

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1 **THE COURT:** All right. What about you, Ms.
2 Studnicki?

3 **MS. STUDNICKI:** No, Your Honor.

4 **THE COURT:** And Ms. Williams, did you have a chance
5 to go over it as well?

6 **MS. WILLIAMS:** Yes, Your Honor.

7 **THE COURT:** And do you see anything in there that was
8 incorrect?

9 **MS. WILLIAMS:** No, Your Honor.

10 **THE COURT:** All right. Well, thank you.

11 Now, I did go over the presentence report and I also went
12 over the Plea Agreement in the case as well and I have met with
13 the probation department about it.

14 I also wanted to indicate that I have received a
15 sentencing memorandum that was prepared by the Government in
16 this case that I went over very carefully and another
17 sentencing memorandum that was prepared by your attorney, Mr.
18 Gordon, I think it was prepared by both Ms. Studnicki and also
19 it has Mr. Carter's name on it.

20 I also read through the couple of letters attached to
21 that, there was one from your father and one from your mother
22 and I read through those very carefully as well. So, those are
23 the things that I have before me here.

24 So, when I went through the presentence report and Plea
25 Agreement, I have some concerns about how the guidelines were

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1 calculated here and let me explain what I mean by that. As you
2 know, Mr. Gordon, you pled guilty to two counts, you pled
3 guilty to Count 5 and 6, that was for coercion and enticement
4 and interstate travel to engage in a sexual act with a minor.
5 And then you also had, in your Plea Agreement, had admitted to
6 certain relevant conduct that you agreed that you had
7 committed. And in that, you had agreed to the conduct that
8 pertained to one production of child pornography on April 15th,
9 2017. And then you also agreed to two different productions of
10 child pornography on August 26, 2017 and another one on August
11 26, 2017, and that was in the relevant conduct portion of your
12 Plea Agreement.

13 The Plea Agreement and the presentence report also
14 assessed four points in determining your base offense level for
15 the possession of what the guidelines refers to as sadistic and
16 masochistic conduct or depictions of violence. So, with
17 respect to those four points, I did not see anything in the
18 presentence report that would justify the application of those
19 four points. So, I want to have that addressed before we go
20 further because I want to make sure that the guideline
21 calculation is correct here.

22 So, where in this presentence report does it reference any
23 material that portrays sadistic or masochistic conduct or
24 depictions of violence. Do we have that here?

25 (Brief pause)

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1 **MS. WILLIAMS:** Sorry, Your Honor, I'm just looking
2 over the application notes.

3 **THE COURT:** Right. And if you can find it, I would
4 like to take a look at it, too, because when I took a look at
5 the application notes, I cannot find an application note that
6 gave a definition of that and so in using my own past
7 experience in these kinds of cases, I could see where there was
8 a reference to the kind of conduct that I would consider to be
9 sadomasochistic or violent or sadistic. So, I'll give you a
10 chance to look for that. But I am not inclined to assess those
11 four points in determining a base offense level.

12 The other thing that the presentence report did was it
13 included all of the counts of the indictment as part of what
14 they call, "Multiple Count Analysis," and the reason that it
15 included those was because in the Plea Agreement, as I said,
16 Mr. Gordon did admit in the relevant portion to some conduct in
17 the indictment.

18 The relevant conduct portion in the Plea Agreement,
19 however, only refers to one video on April 15th, 2017. So,
20 that would not be two counts, that would only be one count and
21 so I'm not going to assess any unit for multiple count purposes
22 for one of those two counts, either Count 1 or Count 2.

23 The other concern that I have was that with respect to
24 Counts 3 and 4, the defendant did admit to the production of
25 child pornography on August 26th, 2017 because there was child

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1 pornography that was found on the devices on that date when he
2 was arrested in this case. But that evidence had been
3 suppressed by The Court and I don't believe that a jury would
4 have been able to see that evidence and I don't believe it's
5 appropriate for him to have an enhancement to his sentencing
6 for those two counts, even though he did admit to the conduct
7 where that evidence would not have been able to be admitted.
8 So, I don't think he should get those two extra units in the
9 multiple-count analysis in Counts 3 and 4.

10 The result of these changes to the calculation of the base
11 offense level would be essentially as follows:

12 The probation department came up with a total of 42 points
13 for the adjusted offense level and that was prior to adding any
14 points for the multiple count analysis and this is in Paragraph
15 81, 42 points. But if you take away the four points for
16 sadomasochistic conduct, you'll come up with a 38 there. And I
17 am not going to assess the four points because I don't see that
18 in the presentence report. I don't see any references to that
19 kind of conduct in any of the images that are referenced.

20 I do want to allow the Government, and Ms. Williams, if
21 you wish to address it further, I'd be glad to hear from you
22 before I make a final decision on it. But would you like to
23 address it?

24 **MS. WILLIAMS:** Sure, Your Honor.

25 And I cannot find the application note at this time. But

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1 my understanding of that enhancement was that it could be
2 applied when there's penetration of a minor and, in this case,
3 Mr. Gordon did admit to a production of child pornography count
4 where there was penetration of a minor and where the minor was
5 bleeding from her vagina at that time. So, that's why the
6 Government assessed the four points for the sadomasochistic
7 conduct.

8 **THE COURT:** Yes, and I did read the portion about the
9 bleeding that occurred and I wonder if that's what it was. But
10 I just -- to me, given the -- although we do have someone who
11 was the subject of this kind of criminal activity when she was
12 age 15 and age 16 and that that is a minor, in the absence of
13 some application note or something that would give me clarity
14 with respect to this being sadomasochistic or violent behavior,
15 I would not want to assess those four points.

16 So, if we take those four points off -- and do you want to
17 be heard on this, Ms. Studnicki? I don't mean to prevent you
18 from saying anything you'd like to say.

19 **MS. STUDNICKI:** No, Your Honor.

20 **THE COURT:** There's also the matter of the multiple
21 count analysis. So, if we don't include one of the two counts
22 for production of child pornography on April 15th because the
23 Plea Agreement refers to only one image, one video, then that
24 would be one point less. And then if we eliminate the two
25 convictions for child pornography possessed on August 26, 2017,

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1 that would take three points off.

2 So, then you would have 38, and you'd add three units for
3 the three relevant conduct-related counts and you come up with
4 41. And so 41, I think, is a correct guideline for the base
5 offense level here that we're dealing with. And then he would
6 get three points off for acceptance of responsibility, both the
7 two points and one point and it come to three points. So, the
8 guideline range that I think would be the correct guideline
9 range here would be between, if you have 38, it will be 235 to
10 293 months.

11 So, Mr. Gordon, I know this is a lot of, perhaps,
12 mumbo-jumbo to you, I don't know for sure that it is, but it
13 may be. But the consequences of this are that I cannot accept
14 your Plea Agreement with that guideline calculation of life in
15 prison in it because I believe the correct calculation is 235
16 to 293.

17 So, because I cannot accept that Plea Agreement, I need to
18 give you the opportunity to withdraw your plea, if you want to
19 withdraw it. You don't have to withdraw it. You could go on
20 and be sentenced. But if you are sentenced, it would not be
21 under a guideline range of life, it would be under a guideline
22 range of 235 to 293 because I think that's the correct
23 guideline range. And I'm not going to accept the Plea
24 Agreement as written because I believe that guideline range is
25 not accurate and I have referred with the probation department

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1 on this.

2 And Ms. Harris, I'd be happy -- if you wish to address The
3 Court, Ms. Harris, you may do so. I know you prepared the
4 report and we had an opportunity to discuss this. Is there
5 anything you'd like to say?

6 **PROBATION OFFICER:** No, Your Honor. Thank you.

7 **THE COURT:** All right. And so do you want to confer
8 with your attorney and decide if you want to go forward at this
9 time?

10 **THE DEFENDANT:** Can I have just a moment, Your Honor?

11 **THE COURT:** Of course.

12 (A brief pause)

13 **MS. STUDNICKI:** Your Honor, we're prepared to go
14 forward today. Thank you.

15 **THE COURT:** All right. Thank you.

16 Ms. Williams, do you wish to be head?

17 **MS. WILLIAMS:** Your Honor, just one moment.

18 (Brief pause)

19 **MS. WILLIAMS:** I have just conferred with my chief,
20 Matthew Roth, from the U.S. Attorney's Office and --

21 **THE COURT:** Mr. Roth.

22 **MR. ROTH:** Good morning, Judge.

23 **MS. WILLIAMS:** I'm not sure if The Court would want
24 us to amend the Rule 11 Plea Agreement at this point to reflect
25 what The Court believes the guideline range to be, but I guess

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1 if Mr. Gordon is prepared to go forward, that would be a
2 possibility or we could leave it as is.

3 **THE COURT:** If you wish to amend the Plea Agreement
4 to reflect these guidelines, that's also an option you could
5 do. So, whatever you'd prefer. Ms. Studnicki, do you want to
6 do that or --

7 MS. STUDNICKI: Well, Your Honor, we'd like to go
8 ahead and have the sentencing hearing today.

14 **MS. STUDNICKI:** Well, I think we're prepared to
15 accept the calculations as calculated by The Court. So, I
16 guess I would leave that up to The Court as to how The Court
17 would want to proceed, I'm not sure. We need to change the
18 Plea Agreement. Could I talk to Ms. Williams for a second?

20 (A brief pause)

21 **THE COURT:** And I did want to say that I conferred
22 with Ms. Chubb, my case manager, and she said that we do have
23 time later today if we needed to come back. If you wished to
24 prepare a new written Plea Agreement, you could do that; but if
25 you prefer to go forward, it's entirely up to you-all.

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1 **MS. WILLIAMS:** I think, Your Honor, the parties are
2 prepared to go forward. And I believe we just discussed and
3 the parties would like to amend the Rule 11 Plea Agreement to
4 reflect the guideline range as calculated by The Court. And
5 that would also change the Government's sentencing
6 recommendation in this case.

7 **THE COURT:** All right. So, will you submit another
8 written Plea Agreement or what do you want The Court to do? Do
9 you want me to just write in the changes to the Plea Agreement
10 that we have or . . .

11 **MS. WILLIAMS:** If we could just write it in, I think
12 that would be easiest; but I'm happy to submit another Plea
13 Agreement, if The Court would like. I do have a copy.

14 **THE COURT:** All right. Why don't you give me your
15 copy. I think my copy might be on my -- oh wait, here it is --
16 is this it? No, this is the unsigned version. This is the
17 original that we had.

18 **MS. STUDNICKI:** Would you rather we alter this one,
19 Your Honor?

20 | THE COURT: That would be fine, I guess.

21 (A brief pause)

22 **THE COURT:** So, you've submitted an original here
23 that contains the revisions.

24 **MS. STUDNICKI:** Your Honor, we didn't change the
25 guideline worksheets, I don't know if The Court wants us to do

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1 that, too? Just the body of the Plea Agreement.

2 **THE COURT:** All right. So, Mr. Gordon, I've been
3 handed a revised Plea Agreement here and I want to make sure,
4 bring to your attention that the parties have made some changes
5 here. I think that you've initialed them as well; is that
6 right?

7 **THE DEFENDANT:** Yes, Your Honor.

8 **THE COURT:** And so on page 4 it says: The
9 defendant's guideline range is between 235 and 293 months,
10 which is the guideline range that I just explained a moment
11 ago. Do you agree with that?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** And that guideline range is referenced
14 again on page 5. And then on page 8, it indicates that the
15 Government makes a non-binding recommendation that it will not
16 seek an imprisonment in this case of more than the top of the
17 applicable guideline range which, in this case, would be the
18 293 months.

19 Now, it's been pointed out that the Plea Agreement did
20 contain worksheets, but those worksheets have a guideline
21 calculation that was different. Is it the parties' agreement
22 that the guideline worksheets that are attached to this no
23 longer apply; is that correct?

24 **MS. WILLIAMS:** Correct.

25 **MS. STUDNICKI:** Yes, Your Honor.

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1 **THE COURT:** So, I'm just going to write "Void" on top
2 of this, okay, on top of the worksheets. And then the
3 Agreement, itself, is what will govern regarding the guideline
4 range. And other than that, the Plea Agreement is acceptable
5 to both parties. So, do both parties wish me to accept the
6 Plea Agreement as has been amended in open court?

7 **MS. WILLIAMS:** Yes, Your Honor.

8 **MS. STUDNICKI:** Yes, Your Honor.

9 **THE COURT:** All right. Well, then in light of the
10 fact that I think this Plea Agreement is consistent with the
11 guideline range that I think applies here, I will accept the
12 Plea Agreement as amended and I'll go through, then,
13 Mr. Gordon, some of those factors I have to consider.

14 These guidelines, by the way, are not mandatory, they're
15 only advisory. In other words, The Court has to take them into
16 account, I need to consider them, but it's not required that
17 you be sentenced within that guideline range under the law. It
18 is required that The Court consider certain factors:

19 I have to consider the nature and circumstances of the
20 offense, what kind of crime it is. I have to consider your
21 background and individual history and characteristics, if you
22 have any criminal history, for example, your family background,
23 your education, essentially everything about your background
24 that's in the presentence report. I have to consider imposing
25 a sentence that promotes respect for the law, provides for a

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1 just punishment, and also considers the seriousness of the
2 offense, and affords adequate deterrence, that means,
3 discouraging people from committing crimes. I also need to
4 protect the public from further crimes and also provide you
5 with any kind of needed treatment you might need, such as, drug
6 treatment or mental health treatment or vocational training.

7 I do need to consider those sentencing guidelines that I
8 already mentioned. I also have to consider the need to avoid
9 what we call, "Unwarranted Sentencing Disparities," that means,
10 treating people differently, even when their underlying crimes
11 and background are the same. And those are the factors, all
12 the factors that I need to consider under federal law in
13 deciding what the sentence should be.

14 And so as I said, I did receive a memo from your attorney,
15 but I would be happy to hear from your attorney at this time.

16 **ALLOCUTION BY MS. STUDNICKI**

17 **MS. STUDNICKI:** Your Honor, thank you.

18 Just briefly, I don't want to reiterate what I put in my
19 memo, but we're requesting a sentence of 10 to 13 years. There
20 is a ten-year mandatory minimum, in this case, which would be
21 120 months. And our recommendation of 10 to 13 would be 120 to
22 156 months. Your Honor, that's based upon the fact that
23 Mr. Gordon has two minor children and he was the primary
24 caregiver for those two children who reside in Indiana at this
25 time with his mother. Mr. Gordon is 47-years-old, and he was

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1 gainfully employed, Your Honor, and has a steady work history
2 and has his entire life to support his family. He is very
3 sorry for this offense. He's sorry to the victim for what
4 occurred. For any trauma that she experienced. He can't
5 obviously go back in time, but he wishes that he could and undo
6 what he did.

7 However, Your Honor, I believe a sentence within the 10 to
8 13-year range is more than adequate punishment for Mr. Gordon.
9 It would remove him from society so that this could not occur
10 again. But even in the absence of that, Your Honor, he has
11 learned a lesson and certainly would not repeat this behavior.
12 His family, Your Honor, is of the utmost importance to him and
13 is foremost in his mind. He has not been able to see any of
14 them since he was arrested on this case and certainly would
15 like to see them again soon.

16 So, Your Honor -- we would also request that The Court
17 consider recommending Milan, he would like to stay close to
18 where his family could visit. They live in Indiana, as I
19 mentioned before.

20 **THE COURT:** Is there no facility that's closer to
21 Indiana?

22 **MS. STUDNICKI:** There is one in Terre Haute, Indiana,
23 Your Honor, but we're unsure of the security level of that
24 facility and whether or not it would be a higher security level
25 than Mr. Gordon would have to be imprisoned at. We would like

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1 to avoid a USP, for instance, which would be a higher security
2 level, possibly.

3 Your Honor, I believe that's all I have to say at this
4 time. His parents did write letters for him and are fully
5 supportive of him. They did acknowledge in their letters that
6 he obviously made a grave mistake and this is more than a
7 mistake, but his parents still support him and hope to some day
8 again see him soon.

9 **THE COURT:** In reading those letters I was struck
10 with the fact that it was not entirely clear that either of
11 Mr. Gordon's parents recognized the seriousness of his
12 potential exposure to sentencing. Do you know whether they are
13 aware of that or have been advised of that?

14 **MS. STUDNICKI:** Well, I'm not sure, Your Honor,
15 because we leave that up to the defendant to advise his family.
16 I'm not really certain.

17 **THE COURT:** All right. Well, I understand, so I
18 guess that's a decision. But it seems that they were under a
19 misapprehension about how serious the case was, unfortunately,
20 so . . .

21 **MS. STUDNICKI:** I believe they're elderly, Your
22 Honor, and there may be reasons why Mr. Gordon didn't want to
23 share the full impact with them.

24 **THE COURT:** Okay. All right. Anything further?

25 **MS. STUDNICKI:** Not from me, Your Honor. Thank you.

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1 **THE COURT:** Thank you, Ms. Studnicki.

2 So, Mr. Gordon, I'd be happy to hear from you. Anything
3 you'd like to say?

4 **STATEMENT BY THE DEFENDANT**

5 **THE DEFENDANT:** Briefly, Your Honor. First and
6 foremost, I want to thank you for being fair in these
7 proceedings. I want to thank Ms. Williams for doing her job
8 and wish her God's speed in her future endeavors. I'd also
9 like to thank Mr. Carter and Ms. Studnicki for their efforts on
10 my behalf. And if I could, Your Honor, I would like to
11 apologize to the young lady and her family and tell them that I
12 am sorry for any harm or negative impacts that are a result of
13 my actions.

14 **THE COURT:** Thank you very much, sir.

15 Okay. Ms. Williams, on behalf of the Government.

16 **ALLOCUTION BY MS. WILLIAMS**

17 **MS. WILLIAMS:** Yes, Your Honor. Thank you.

18 On November 6th, 2016, when Minor Victim 1 met the
19 defendant, Robert Gordon, she was 15-years-old. She responded
20 to a whisper message that Gordon posted seeking help with his
21 young daughter. Little did she know that the defendant didn't
22 actually need help. What he needed was someone to take
23 advantage of. Someone that he could manipulate. Someone that
24 he could eventually lure into starting a sexual, illegal
25 relationship with.

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1 At 15-years-old Minor Victim 1 was at a stage in her life
2 that is extremely vulnerable for a young woman. I'm sure that
3 everyone in this courtroom can remember their teenage years:
4 The insecurities that you have, the self discovery that you go
5 through, the pressure to fit in and also the pressure to look
6 forward and plan for the rest of your life. You're focused on
7 things like the ACT, the SAT, college prep courses or college
8 applications.

9 At 15-years-old, Minor Victim 1 had to balance all of the
10 pressures of being a teenager, with the reality of being in a
11 position that no child should have to be in, being the victim
12 of a child exploitation offense. Your Honor, there is
13 absolutely to no way to quantify, no way to explain, and quite
14 frankly, no way to imagine the impact that this defendant's
15 actions will have on Minor Victim 1 for the rest of her life.

16 Will she ever feel safe in a relationship again? Can she
17 trust the adult males in her life? Can she safely use the
18 internet? How will her mental health and emotional health be
19 after the events that took place in November of 2016? As The
20 Court is aware, children are children for a reason. They are
21 not as emotionally developed or mature as adults. They can't
22 make rational decisions like some adults can. And as adults,
23 we're in a position to protect children. But this defendant's
24 decision to prey on a child, part of society's most vulnerable
25 population, as a father himself, is unacceptable. And no child

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1 deserves to be put in the position that Minor Victim 1 was in.

2 Now, I know The Court is very familiar with the facts of
3 this case. And we know that Minor Victim 1 was not the only
4 person who was impacted by Mr. Gordon's actions. As The Court
5 can recall, Mr. Gordon came to law enforcement's attention
6 after Minor Victim 1's parents learned, through a social media
7 post, that their daughter was not where she was supposed to be.
8 And they had to live through the traumatizing moments of going
9 to a seedy motel in Southfield, wondering if their daughter was
10 alive, who the defendant was, and what they could do to help
11 their daughter. Again, this is a situation that no parent
12 deserves to be in. And it was all because this defendant
13 decided to go online as a predator and target Minor Victim 1.

14 Your Honor, in the Government's Sentencing memorandum we
15 recommend a sentence of 25 years of imprisonment and at the
16 sentencing today we're changing that recommendation to the top
17 of the guidelines which The Court calculated at 293 months. On
18 behalf of the victim, on behalf of her family, Your Honor, we
19 believe that a sentence at the top of the guidelines is
20 appropriate, given this defendant's time, in this case, given
21 his history and characteristics and in comparison to other
22 defendants that are before The Court in the Eastern District of
23 Michigan.

24 Thank you, Your Honor.

25 **THE COURT:** Thank you. From the investigation that

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1 was done, and there was nothing like this in the presentence
2 report, but was there any evidence that he was contacting other
3 minors besides MV-1?

4 **MS. WILLIAMS:** There was, Your Honor.

5 **THE COURT:** Okay. Well, I'm not necessarily going to
6 be holding that against Mr. Gordon because that's not in the
7 presentence report. But I didn't want to, at the same time,
8 give Mr. Gordon any kind of positive consideration for not
9 being involved in possibly contacting other minors and so I
10 wanted to be clear on that point.

11 So, let me discuss the different factors that I have to
12 consider. I do have to consider the nature and circumstances
13 of the offense. As has been pointed out, the case came to the
14 attention of law enforcement when Mr. Gordon was discovered in
15 a Southfield hotel room with Minor Victim 1, she had only
16 turned 16 about ten days before the police arrived at that
17 location. She had apparently posted something on social media
18 about her location in being with the defendant. And her
19 cousin, I believe, who ended up alerting her parents to this
20 and the police end up entering the hotel room having gotten the
21 key from the front desk and they did find the defendant with
22 Minor Victim 1 at that time. They also found evidence of child
23 pornography that had been recorded.

24 That, as I pointed out, that evidence was later suppressed
25 because of the lack of a warrant when the officers went into

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1 the room; but nevertheless, additional evidence was recovered
2 at a later time in the form of Minor Victim 1's prior phone,
3 cell phone, which had evidence of numerous communications
4 between Mr. Gordon and Minor Victim 1. And Minor Victim 1 was
5 also interviewed and talked about the fact that Mr. Gordon had
6 traveled to Michigan both on that occasion in order to engage
7 in criminal sexual conduct with her and also on other
8 occasions. And the presentence report goes into some detail
9 about these things, that there were thousands of whisper chats
10 between Minor Victim 1 and Mr. Gordon.

11 And that during the timeframe of between November 16th of
12 2016 and the time when the arrest occurred in August of 2017,
13 that Mr. Gordon had traveled up here to Michigan in order to
14 meet with the victim and to engage in the criminal sexual
15 exploitative conduct with her. And so the type of conduct that
16 we have here is extremely serious. It does involve the
17 victimization of a minor, who might have been 16-years-old
18 which is the age of consent under Michigan Law in August 2017
19 when the arrest occurred. But she was 15-years-old when the
20 other meetings that are referenced in the presentence report
21 occurred, that being in November 2016 and then later in
22 April 2016. And defendant has admitted to making child
23 pornographic images of Minor Victim 1 that were manufactured as
24 a result of the encounters that he had with Minor Victim 1.

25 And so the conduct is extremely serious. It's conduct

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1 that involves a real person and somebody who is deeply affected
2 by this, as Ms. Williams points out, that her life have been
3 altered. That her parent's lives have been altered in a very
4 negative way. And so, I have to take all of that into account
5 and I do take all that into account.

6 In terms of Mr. Gordon's personal history and background.
7 I have reviewed the presentence report there and he had a
8 positive upbringing. Although his parents were divorced when
9 he was young they, nevertheless, were supportive. Both parents
10 were supportive of him. He has been -- had two different
11 marriages, has three children. Before the offense he was
12 actually raising his two children by his second wife who needed
13 him because his second wife was unable to provide any real
14 support for them. And according to the presentence report,
15 Mr. Gordon was doing well with these children, raising them
16 effectively, and that's a positive thing.

17 Mr. Gordon also has a history of regular employment in
18 supporting his family. Essentially, he's always been able to
19 maintain some kind of employment and that is positive. The
20 record includes the fact that Mr. Gordon has a military service
21 record where he was in for a period of time in the U.S.
22 military and served overseas during the first Gulf War
23 timeframe between 1989 and 1995. That is a positive element of
24 Mr. Gordon's background.

25 I do need to consider some of those other factors about

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1 promoting respect for law and providing a just punishment. It
2 is a very serious offense, as I have mentioned it. It involves
3 the manipulation of a minor and that is very serious. The
4 other factor I need to consider is deterrence, what they call
5 affording adequate deterrence, that means, discouraging people
6 from committing crimes. The guideline range here and possible
7 penalty is extremely high and so any sentence, really, anywhere
8 approaching these guidelines would be a sufficient deterrent.
9 Mr. Gordon has never had any criminal history of significance
10 before. There was a reference to, in 1992, an obstruction of
11 justice case that had had some child molestation charges that
12 were dismissed so that the only conviction was obstruction of
13 justice and that happened so long ago that none of that was
14 counted in terms of Mr. Gordon's criminal history, but it is
15 part of his criminal history. But other than that, he has had
16 a clean record with no other convictions.

17 He's had some interactions with law enforcement in 1996
18 and 2005, one that resulted in acquittal and one that resulted
19 in a dismissal. And so I don't give those -- I really can't
20 give those much weight, but it's part of your background
21 though. Other than these things, you have not had a history of
22 violating the law. And the offense here is limited to the
23 conduct that you had with the one victim. Generally speaking,
24 you've led a productive and non-criminal and a law-abiding life
25 up until now. But this is a very serious offense.

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1 So, those are all of the different factors that The Court
2 has to consider. The guideline range, as I mentioned here and
3 as the parties have agreed to is between 235 and 293 months,
4 that's between about 23 and a half to 25, a little bit under 25
5 years. I think that that guideline range is greater than
6 necessary to accomplish the goals of sentencing and I'll try to
7 explain why.

8 As I've indicated, Mr. Gordon has not had a history of
9 criminal behavior here, other than this offense. And the
10 offense involves terrible conduct regarding Minor Victim 1, but
11 is limited to the conduct of Minor Victim 1. There's no
12 evidence of possession of other child pornography, for example,
13 as we often see in cases where individuals are engaging in
14 predatory conduct like this.

15 I do take into account the fact that Mr. Gordon had been
16 raising his family and supporting his family, whose children
17 who had no other real option than his care. And I see that
18 also as something positive.

19 I do think a significant sentence is appropriate here
20 because of the nature of the conduct. The conduct is very
21 serious and involves harm to a young woman who will be dealing
22 with this for the rest of her life and so the sentence needs to
23 take that into account and be a sentence that is a significant
24 period of time.

25 In considering all these factors, I believe that a

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1 sentence that is below the guideline range here, but is a very
2 significant period of time, would be sufficient. And so I'm
3 going to impose a sentence, in this case, of 17 years, which is
4 204 months.

5 I recognize that that represent a variance from the
6 guideline range. But I also think that it is a significant and
7 lengthy sentence in light of the nature of the conduct
8 involving the victim. So, that is the sentence I'm going to
9 impose.

10 If either party wishes to place any objections on the
11 record, they may do so at this time. Any objections?

12 **MS. WILLIAMS:** No, Your Honor.

13 **MS. STUDNICKI:** No, Your Honor.

14 **Sentencing By The Court**

15 **THE COURT:** Pursuant to the Sentencing Reform Act of
16 1984, The Court, considering the Sentencing Guidelines and
17 factors contained in 18 U.S. Code Section 3553(a), hereby
18 commits the defendant to the custody of the U.S. Bureau of
19 Prisons for a term of 204 months on each count to run
20 concurrently.

21 Upon release from imprisonment, the defendant shall be
22 placed on supervised release for a term of eight years on each
23 count to run concurrently.

24 It is further ordered that defendant pay a special
25 assessment of \$100 on each count, for a total of \$200 which

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1 will be due immediately.

2 It is further ordered that the defendant pay a Justice for
3 Victims Trafficking Act assessment of \$5,000 on each count for
4 a total of \$10,000, which will be due immediately.

5 The court waives the imposition of a fine, cost of
6 incarceration and cost of supervision due to defendant's lack
7 of financial resources.

8 It is further ordered the defendant pay restitution
9 payable to the Clerk of the Court for a disbursement to the
10 victim identified in this case in an amount that will be
11 determined at a later date.

12 The mandatory drug testing condition is suspended based on
13 The Court's determination the defendant poses a low risk of
14 future substance abuse.

15 Pursuant to 34 U.S. Code Section 40702, the defendant
16 shall cooperate with the collection of a DNA sample as directed
17 by the probation officer.

18 While on supervision, the defendant shall abide by the
19 standard conditions as adopted by the U.S. District Court for
20 the Eastern District of Michigan and shall comply with the
21 following special conditions:

22 Number One, the defendant shall comply with the
23 requirements of the Sex Offenders Registration & Notification
24 Act as directed by the Probation Officer, the U.S. Bureau of
25 Prisons, or any state offender registration agency in which he

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1 resides, works as a student, or was convicted of a qualifying
2 offense.

3 Number Two, the defendant shall provide the Probation
4 officer with accurate information about all the computer
5 systems, hardware and software, all passwords and internet
6 service providers that the defendant has potential access to
7 and abide by all rules of the U.S. Probation Department's
8 Computer monitoring program.

9 The defendant shall only access a computer approved by the
10 probation officer. The defendant shall consent to the
11 probation officer's conducting periodic, unannounced
12 examinations of all computer systems which may include computer
13 monitoring software at the defendant's offense.

14 For the purpose of accounting for all computers, hardware,
15 software and accessories, the defendant shall submit his
16 person, residence, computer and/or vehicle to a search
17 conducted by a U.S. probation officer at a reasonable time and
18 a reasonable manner. The defendant shall inform any of the
19 residents that the premises and his computer may be subject to
20 a search pursuant to this condition.

21 The defendant shall provide the probation officer with
22 access to any requested financial information, including
23 billing records, telephone, cable, internet, satellite, et
24 cetera.

25 Number Three, the defendant shall not own or possess a

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1 camera, photographic device, or other equipment, including
2 video recording equipment without prior approval of the
3 probation officer.

4 Number Four, the defendant shall not have contact directly
5 or indirectly with any victim or witness in the instant
6 offense, unless approved by the probation officer.

7 Number Five, the defendant shall not associate with minor
8 children under the age of 18 except in the presence of a
9 responsible adult, who is aware of the nature of the
10 defendant's background and the current offense without prior
11 approval by the probation officer.

12 The defendant may have unsupervised contact with his
13 children at the discretion of the probation officer.

14 The defendant shall not frequent places where children
15 congregate on a regular basis, such as, but not limited to
16 school grounds, playgrounds, child toy stores, video arcades,
17 et cetera.

18 Number Six, the defendant shall notify anyone that he may
19 date or marry with a minor child under the age of 18 of this
20 conviction.

21 Number Seven, the defendant shall have employment
22 preapproved by the probation department. The defendant shall
23 not be employed at or participate in any volunteer activities
24 that involve conduct with minors under the age of 18 or adults
25 with disabilities without prior approval of the probation

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1 officer.

2 Number Eight, the defendant shall have all residences
3 preapproved by the probation department. The defendant shall
4 not provide care or live in a residence where children under
5 the age of 18 or adults with disabilities also reside without
6 prior approval of the probation officer.

7 Number Nine, the defendant shall not purchase, sell, view
8 or possess images in any form of medium or live venue that
9 depict pornography, sexually explicit conduct, child erotica,
10 or child nudity. The defendant shall not patronize any place
11 where such material or entertainment is available.

12 Number Ten, the defendant shall successfully complete any
13 sex offender diagnostic evaluations, treatment, or counseling
14 programs as directed by the probation officer. Reports
15 pertaining to sex offender assessments and treatment shall be
16 provided to the probation officer. Based on the defendant's
17 ability to pay, the defendant shall pay the cost of diagnostic
18 evaluations, treatment or counseling programs in an amount
19 determined by the probation officer.

20 Number 11, the defendant shall be required to submit to
21 periodic polygraph testing at the discretion of the probation
22 officer as a means to ensure compliance with the requirements
23 of supervision or treatment. No violation proceeding shall
24 arise solely on the results of a polygraph examination.

25 Based on the defendant's ability to pay, the defendant

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1 shall pay the cost of the polygraph examination in an amount
2 determined by the probation officer.

3 That is the sentence of The Court.

4 Now, Mr. Gordon, under the Plea Agreement that we were
5 just discussing previously, there is a section here called,
6 "Paragraph 9." And under that section it basically says that
7 as long as whatever the sentence is is not greater than what
8 the Plea Agreement provides for, then you will be giving up
9 your right to appeal.

10 On this case, the sentence is lower than what the Plea
11 Agreement provides for and so it's likely that by this
12 Agreement you will be giving up your right to appeal the
13 conviction and the sentence.

14 Now, for some reason you believe that you do have the
15 right to appeal, then you need to do so within 14 days of the
16 date that the written judgment is issued. Do you understand?

17 **THE DEFENDANT:** Yes, Judge.

18 **THE COURT:** All right. Is there anything further
19 that we need to take up in this case?

20 **MS. WILLIAMS:** Your Honor, at this time, the
21 Government moves to dismiss Counts 1 through 4 and 7 of the
22 indictment.

23 **THE COURT:** Counts 1 through 4 and 7. Are there
24 any -- is there any objection to dismissing Counts 1 through 4
25 and 7?

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1 MS. STUDNICKI: No, Your Honor.

2 THE COURT: All right. Counts 1 through 4 and 7 will
3 be dismissed.

4 Now, I noticed that there was a provision for possible
5 restitution. What is the Government going to do on that?

6 MS. WILLIAMS: Your Honor, at this time, Minor Victim
7 1 has not submitted a restitution request. I'm willing to
8 speak with her family after the sentencing today. And if they
9 do submit a restitution request, we'll work with the defense
10 counsel to get that to The Court as soon as possible.

11 THE COURT: All right. Well, we do need to get that
12 soon because we want finality with respect to what the judgment
13 is going to be, all right.

14 MS. WILLIAMS: Yes, Your Honor.

15 THE COURT: So, let's get that in as soon as possible
16 if there is any restitution request. Is that going to be
17 subject to a stipulation of the parties then or what?

18 MS. WILLIAMS: We would hope so, Your Honor.

19 THE COURT: Well, do you anticipate that, Ms.
20 Studnicki, or?

21 MS. STUDNICKI: Well, I think we'll have to see what
22 it is, Your Honor. I can't commit to anything right now, but
23 certainly we'll try to work with the Government on that.

24 THE COURT: All right. Other than that, is there
25 anything else we need to take up?

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1 **MS. WILLIAMS:** No, Your Honor. Thank you.

2 **MS. STUDNICKI:** No, Your Honor. Thank you.

3 **THE COURT:** All right. Thank you all very much.

4 Good luck to you, Mr. Gordon.

5 And let me say one more thing, I do want to recommend
6 Milan as the location for the sentence to be served. That was
7 part of the request and I want to make sure that was part of
8 the judgment. That is not something that we could guarantee,
9 that's up to the U.S. Bureau of Prisons to make that
10 determination. But I do recommend, at the request of the
11 defendant, that Mr. Gordon be placed in FCI-Milan.

12 **MS. STUDNICKI:** Thank you, Your Honor.

13 **(Whereupon proceedings concluded at 11:54 a.m.)**

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C E R T I F I C A T I O N

5 I, Nefertiti A. Matthews, official court reporter
6 for the United States District Court, Eastern District of
7 Michigan, Southern Division, appointed pursuant to the
8 provisions of Title 28, United States Code, Section 753,
9 do hereby certify that the foregoing is a correct
10 transcript of the proceedings in the above-entitled cause
11 on the date hereinbefore set forth.

12 I do further certify that the foregoing
13 transcript has been prepared by me or under my direction.
14

15 Date: April 21, 2020
16

17 s:/Nefertiti A. Matthews
18 Nefertiti A. Matthews,
Official Court Reporter
19

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